

ESTTA Tracking number: **ESTTA476475**

Filing date: **06/06/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	94002525
Party	Applicant Boi Na Braza, Inc.
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Attachments	94002525 - Motion to Amend Boi Na Braza.pdf ( 4 pages )(34516 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BOI NA BRAZA, INC.,

Applicant,

vs.

TERRA SUL CORPORATION A/K/A  
Churrascaria Boi Na Brasa,

Excepted User.

Concurrent Use No. 94002525

Ser. No. 77/779,339

**MOTION TO AMEND APPLICATION AND  
SUSPEND THE PROCEEDING FOR THIRTY DAYS**

**Brief Summary**

Applicant BOI NA BRAZA, INC. requests that the Trademark Trial and Appeal Board (“TTAB”) approve this Motion to Amend Application Ser. No. 77/779,339 (the “Application”) to exclude both the state of New Jersey and the state of New York, instead of excluding only the state of New Jersey. The Parties dispute whether Applicant is entitled to a registration that includes New York City. By removing the entire state of New York, Applicant is confident that this amendment resolves the entire dispute between the Parties. It is Applicant’s sincere hope and desire to finally end this five-year dispute between Parties, which has spanned several TTAB proceedings.

Applicant requested the consent of Excepted User Terra Sul Corporation, but received no response. Because Applicant was unable to secure the consent of Excepted User, Applicant also requests a thirty (30) day suspension so the Parties and the Board have time to properly evaluate this amendment and schedule any telephone conferences with the Parties, if necessary.

### **Motion to Amend to Exclude the Entire State of New York**

Applicant requests to amend the Application to exclude both the state of New Jersey and the state of New York.

Applicant requested the consent of Excepted User, but received no response. Applicant therefore requests that the Board, in its discretion, approve the amendment pursuant to 37 C.F.R. § 2.133(a); TBMP § 514.03. In support, Applicant believes that the entire dispute in this proceeding is whether Applicant is entitled to register the BOI NA BRAZA mark in New York City. By excluding the entire state of New York, Applicant is resolving the entire dispute between the Parties.

For support, Applicant directs the Board's attention to Excepted User's answer filed on January 19, 2012 ("Answer"). As apparent from the Affirmative Defenses in the Answer, the dispute is limited to New York City. *See* pages 2-4 of Excepted User's Answer, emphasizing New York City, the New York Metropolitan Area, or the Tri-State Area, in six of eight Affirmative Defenses. Presently, Applicant seeks to exclude not only New York City but the entire state of New York. Excepted User did not allege any other geographic area of dispute in its Answer. As a result, Applicant believes that entry of the amendment to exclude the entire state of New York resolves this proceeding and obviates the need for a trial.

### **Motion to Suspend Proceedings for Thirty (30) Days**

Applicant also files this Motion to Suspend the proceeding for thirty (30) days, or pending resolution of the above Motion to Amend. Applicant submits that good cause exists for the suspension under 37 C.F.R. § 2.117(c); TBMP § 510.03(a). In short, Applicant believes the above Motion to Amend wholly resolves the dispute between the parties.

Applicant believes that the amendment completely resolves the dispute between the Parties. However, if Excepted User opposes Applicant's Motion to Amend, more time will help the Parties and the Board determine exactly what issues remain. More time would then allow the parties to either resolve any remaining issues, or narrow the issues for trial. Beyond New York City, Applicant is unaware of any disputed geographical areas.

These motions are requested in good faith to fully resolve this Proceeding and the dispute between the Parties, and not for the purpose of delay. Applicant respectfully requests that the Motions be granted.

Dated: June 6, 2012

Respectfully submitted,

BOI NA BRAZA, INC.

By: /s/ Justin S. Cohen  
Justin Cohen  
Deborah L. Lively

Thompson & Knight LLP  
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ATTORNEYS FOR APPLICANT  
BOI NA BRAZA, INC.

**CERTIFICATE OF SERVICE**

I certify that this Motion is being served on Excepted User through its attorney of record, Eamon J. Wall, via First Class Mail, postage prepaid, on this 6<sup>th</sup> day of June, 2012, at the following address:

Eamon J. Wall  
Wall & Tong, LLP  
25 James Way  
Eatontown, New Jersey 07724

/s/ Justin S. Cohen  
Justin Cohen